(1)
Supreme Court, U.S.
FILED
CASE NO.
02 797 OCT 25 2002
OFFICE OF THE CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 2002

CHRISTINE HANLON and MICHAEL GOLDSUN
Petitioners,

vs.

SHOMEN KUNG CHIA and STANLEY CHIA
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

DAVID P. WEAVER, JR.
Attorney at Law
870 Market Street, Suite 349
San Francisco, CA 94102
Telephone: (415) 433-7009

32 pp

QUESTIONS PRESENTED FOR REVIEW

1. Is the constitutional guarantee of due process in order to confer personal jurisdiction over a defendant denied to a person when the evidence presented unequivocally establishes that full compliance with the statutory mandate for service of process was never required by the state court and a defendant was not served with service of process?

LIST OF PARTIES

All parties appear in the caption of the case on the cover.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW.....i

LIST OF PARTIES.....ii

TABLE OF AUTHORITIES.....v

OPINIONS BELOW.....1

JURISDICTION.....1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE 2

STATEMENT OF THE CASE.....2

A. The Superior Court—Unlimited Jurisdiction Proceedings Below.....2

B. The Court Of Appeal Proceedings Below.....3

C. The Proceedings Of The Supreme Court of California Below.....3

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.....4

A. The Present Decision Is In Conflict With Applicable Decisions Of This Court.....4

B. Important Questions Of Law Which Should Be Settled By This Court.....5

TABLE OF CONTENTS—(Continued)

LEGAL ARGUMENT.....7

CONCLUSION.....12

INDEX TO APPENDICES

APPENDIX A.....App.1

APPENDIX B.....App.2

APPENDIX C.....App.3

TABLE OF AUTHORITIES

Cases **Page(s)**

Andrus v. Municipal Court
545 Cal. App. 3d 1041 (1983).....1

Bandini Petroleum Co. v. Superior Court
284 U.S. 8 (1931).....1

Bishop v. Silua
234 Cal. App. 3d 1317 (1991).....5,6,12

Brein v. Bretchtel-Jochim Group, Inc.
6 Cal. App. 4th 1387 (1992).....6

Evartt v. Superior Court
89 Cal. App. 3d 795 (1979).....12

Heldt v. Municipal Court
163 Cal. App. 3d 352 (1985).....1

Independent Bankers Trust Co. v. Superior Court
138 Cal. App. 3d 238 (1982).....12

Khourie, Crew & Jeger v. Sabek, Inc.
220 Cal. App. 3d 1009 (1990).....6

Madriga v. Superior Court
346 U.S. 556 (1954).....1

Magnecomp Corp. v. Athene Co.
209 Cal. App. 3d 526 (1989).....10

Mennonite Board of Missions v. Adams
103 S. Ct. 97 (1983).....13

TABLE OF AUTHORITIES — (Continued)

Cases **Page(s)**

Mullane v. Central Hanover Bank & Trust Co.
339 U.S. 306 (1950).....4, 5, 6, 13, 14

Newman v. Superior Court
179 Cal. App.3d 377 (1986).....2

Pennoyer v. Neff
95 U.S. 714 (1877).....4

Pousson v. Superior Court
165 Cal. App. 2d 750 (1958).....12

Schroeder v. New York
371 U.S. 208 (1962).....13

Stamps v. Superior Court
14 Cal. App. 3d 108 (1971).....7

Sternbeck v. Buck
148 Cal. App. 2d 829 (1957).....9, 11

Sullivan v. Sullivan
256 Cal. App. 2d 301 (1967).....12

Wilson v. Eddy
2 Cal. App. 3d 613 (1969).....7

Zirbes v. Stratton
187 Cal. App.3d 1407 (1986).....6, 12

Constitutions And Statutes

U.S. Const. amend. XIV,/1.....2

TABLE OF AUTHORITIES — (Continued)

Cases **Page(s)**

28 U.S.C./1257.....1

Code of Civil Procedure Section 415.10.....2, 4, 5

California Rules of Court, Rule 28.....2

Treaties **Page(s)**

CEB, California Civil Writ Practice (2nd edition, update 1995).....1, 2

Eisenberg, Horovitz & Wiener, CAL. PRAC GUIDE: CIVIL APPEALS &WRITS (The Rutter Group 1995).....2

Other Authorities

1 Annals of Congress, 439 (John Gales ed., 1789).....13

Congressional Globe, 39th Cong., I st Sess. 1089 (1866).....13

Jonathan Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution (1836).....13

Rest. 2d Conflict of Laws/25.....4

Rest. 2d Judgments/2.....4

Petitioners Christine Hanlon and Michael Goldsun respectfully petition the Court to issue a writ of certiorari to the Supreme Court of the State of California in the case of Chia v. Hanlon et al., No. S109250 (October 16, 2002), and show the following:

OPINIONS BELOW

There are no official or unofficial reports of the opinions delivered in this case by other courts. Copies of the opinions of the Superior Court—Unlimited Jurisdiction, Court of Appeal and Supreme Court of the State of California are reproduced in the Appendices to this Petition.

JURISDICTION

The date of entry of the judgment of the Supreme Court of the State of California sought to be reviewed is October 16, 2002. There is no right to a rehearing or an order respecting a rehearing. The statutory provision conferring jurisdiction on this Court to review the judgement by writ of certiorari is 28 U.S.C. / 1257.

The United States Supreme Court will review decisions "rendered by the highest court of a State in which a decision could be had." 28 U.S.C. / 1257. If the highest state court denies discretionary review, the United States Supreme Court has jurisdiction to review the decision of the intermediate court. Bandini Petroleum Co. v. Superior Court 284 U.S. 8, 14 (1931).

A state court judgment finally disposing of a writ petition is a final judgment reviewable under 28 U.S.C. / 1257. See, Madriga v. Superior Court 346 U.S. 556 (1954). In California writ proceedings, the California Supreme Court is the highest state court available. Thus, review is proper in the United States Supreme Court. CEB, California Civil Writ Practice, (2nd edition, update 1995) // 12.15-

12.16, pp. 471—472.

Review of a decision concerning a judicial order made in a case pending in the Superior Court—Unlimited Jurisdiction and challenged by mandate or prohibition is by a new writ filed in the next higher court, the Court of Appeal. Heldt v. Municipal Court 163 Cal. App. 3d 532 (1985); Andrus v. Municipal Court 143 Cal. App.3d 1041, 1046 (1983).

After a decision of the Court of Appeal becomes final as to that court concerning a writ case, a party may petition the California Supreme Court for review. The petition may be filed on summary denial of a writ petition. Review of a Court of Appeal decision concerning a writ petition is by a petition for review in the California Supreme Court. CEB, California Civil Writ Practice, supra, / 1071, p. 437.

Review by the California Supreme Court is not limited to a decision of the Court of Appeal on the merits. The Supreme Court can also grant review of orders summarily denying writ petitions. See, California Rules of Court, Rule 28; Eisenberg, Horovitz & Wiener, CAL. PRAC. GUIDE: CIVIL APPEALS & WRITS (The Rutter Group 1995) / 13.12, p. 13—2.

If the case was summarily denied in the court of appeal, the Supreme Court can grant review and transfer to the court of appeal with directions to issue an alternative writ. Newman v. Superior Court 179 Cal. App.3d 377, 380 (1986).

Alternatively, the state Supreme Court can grant review and issue an alternative writ returnable before the California Supreme Court, in which case a return is filed. CEB, California Civil Writ Practice (2nd edition, update

1995)/1072, p. 437—438.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

U.S. Const. amend. XIV, / 1, says at its pertinent part "nor shall any State deprive any person of life, liberty, or property, without due process of law." The statutory notice under California law at issue in this case contravenes the requirements of the Fourteenth Amendment and Petitioners are to be deprived of property rights without due process of law.

The California statute at issue is Code of Civil Procedure/415.10. Code of Civil Procedure/415.10 fails to meet the minimum requirements of due process in that it is being interpreted by the California courts so as not to require compliance with its provisions so that the statute does not provide proper notice that a proceeding has been commenced against a party and that the action will deprive a party of his property.

Code of Civil Procedure/415.10 provides for service of a summons and complaint by personal service. The California courts, however, have interpreted the statute so as to find that a person has been personally served even though full compliance with the statutory provisions have not been met and the person has not actually been personally served. Code of Civil Procedure / 415.10 provides as follows:

> A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery.
>
> The date upon which personal delivery is made

shall be entered on or affixed to the face of the copy of the summons at the time of its delivery. However, service of a summons without such date shall be valid and effective. (West's Code Civ. Proc. /415.10.)

STATEMENT OF THE CASE

A. The Superior Court—Unlimited Jurisdiction Proceedings Below

On June 28, 2002, Respondents Shomen Kung Chia and Stanley Chia filed an unlawful detainer complaint in the Superior Court-Unlimited Jurisdiction of the State of California, City and County of San Francisco against Petitioners herein, Christine Hanlon and Michael Goldsun, Civil Action No. CUD-02-602950. The complaint was accompanied by a summons issued by the Clerk of the Superior Court for the City and County of San Francisco.

Upon learning of the action, on July 5, 2002, Petitioners filed a motion to quash service of the complaint and summons of said action referenced above. The federal questions to be reviewed by this Court were raised by Petitioners in the trial court. The motion to quash service included:

(1) Notice of Motion to Quash Service of Summons and Complaint;

(2) Memorandum of Points and Authorities In Support of Motion to Quash Service of Summons and Complaint;

(3) Declaration of Defendant Christine Hanlon in Support of Motion to Quash Service of Summons and Complaint; and

(4) Declaration of Defendant Michael Goldsun In Support of Motion to Quash Service of Summons and Complaint.

Respondents filed their opposition to the Motion to Quash Service of Summons and Complaint. The opposition included a memorandum entitled Memorandum of Points and Authorities in Opposition to Defendants Motion to Quash , a Declaration of Gary Cohen in Opposition to Defendants Motion to Quash, a Declaration of Stanley Chia in Opposition to Defendants Motion to Quash and a Declaration re: Service of Process.

On July 12, 2002, the San Francisco Superior Court adopted its tentative ruling denying the Motion to Quash. An Order was entered by the San Francisco Superior Court on July 12, 2002 denying the Motion to Quash. (Appendix A)

B. The Court Of Appeal Proceedings Below

On July 23, 2002, Petitioners timely filed a Petition for Writ of Mandate, Prohibition or Other Appropriate Relief before the state First District Court of Appeal, Division One. The federal questions to be reviewed were once again raised by Petitioners. The Court of Appeal requested that Respondents file opposition to the Petition. The appellate court thereafter denied the petition without comment on August 7, 2002. (Appendix B)

C. The Proceedings Of The Supreme Court of California Below

On August 19, 2002, Petitioners timely filed and served a Petition for Review with the Supreme Court of California. The Petitioners raised the federal questions to be reviewed by this Court before the California Supreme

Court. The Supreme Court of California subsequently denied the Petition for review on October 16, 2002. (Appendix C)

This Petition is timely filed and served. Petitioners raised in the court of first instance and to the highest appellate court, the federal questions sought to be reviewed. Unless the relief requested herein is granted, Petitioners will be irreparably harmed.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

A. Important Questions Of Law Which Should Be Settled By This Court

In this action Respondents seek to impose liability on Petitioners and Petitioners are entitled to appear and defend. Jurisdiction over the Petitioners is necessary for the validity of any judgment over the person of Petitioners. Pennoyer v. Neff, 95 U.S. 714 (1877).

Personal jurisdiction over Petitioners depends upon due process, i.e., notice and opportunity for a hearing. Proper notice depends upon compliance with statutory jurisdictional requirements of process enacted by a state. But the constitutional guarantee of due process must be satisfied by (1) employing a reasonable method of notice, and (2) giving a reasonable opportunity for a hearing. Mullane v. Central Hanover Bank, 339 U.S. 360 (1950).

The requirement is of proper notice or notification, and proper notice is not satisfied by actual knowledge without such notification. Hence, even though Petitioners may have knowledge of the action, there is no jurisdiction over them unless the statutory method of notification, i.e., the type of service is sufficient. See, Rest. 2d, Judgments / 2,

Comment d; Rest. 2d Conflict of Laws/25, Comment f.

Under the still vital holding in Pennoyer v. Neff, 95 U.S. 714 (1877) personal service of the defendant within the territorial jurisdiction of the state is the typical and preferred method. The California statute, Code of Civil Procedure/415.10, specifies personal delivery as the primary method for sufficiency of notice in order to obtain personal jurisdiction over the defendant.

While personal service is the typical method of service and is sufficient, such statutory method should be held insufficient where the statute is not strictly construed and enforced so as to require actual personal service. *See*, Mullane v. Central Hanover Bank & Trust, Co., 339 U.S. 306 (1950). In accordance with the Mullane decision, service must be of te best type available under the circumstances. Allowing the statute for personal service, i.e., Code of Civil Procedure/415.10, to be construed liberally so as to result in personal service not being actually effected violates the due process clause of the Constitution. In complete compliance, instead of strict compliance, defeats the requirements under the due process clause that the service must be of the best type available. Mullane v. Central Hanover Bank & Trust, Co., *supra*.

The constitutional guarantee of due process has been denied Petitioners. The requirements of proper notice demands strict compliance for personal service of Petitioners as the basis for jurisdiction over Petitioners. In the absence of strict compliance in effecting personal service, the California courts have no jurisdiction of the person of Petitioners. Compliance with the state statutory procedure of notice (process) is jurisdictional. No jurisdiction of the person is acquired by the court in the particular action without such compliance with the state statute. Strict compliance with the statutory method of personal service was

essential to jurisdiction over Petitioners and violated constitutional due process. Such departure from strict compliance of personal service over Petitioners must be recognized and held invalid by this Court.

This case presents the important question of whether the statutory requirements for service of process must be fully complied with in order to obtain personal jurisdiction over a person. California case law is in conflict with decisions of this Court as to whether the statutes regarding service of process should be strictly construed or whether substantial compliance is all that is necessary to meet the service requirements. This Court should resolve this important issue regarding this fundamental issue of due process.

B. The Present Decision Is In Conflict With Applicable Decisions Of This Court

This controversy questions the constitutional sufficiency of California's statute allowing for service of a summons and complaint and the interpretation of said statute by the California courts. Petitioners challenge the constitutionality of California's statute and interpretation thereof by the California courts under the Due Process Clause of the Fourteenth Amendment.

Due process requires the government to give notice to individuals of government actions which would deprive those individuals of a constitutionally protected life, liberty, or property interest. When a court (even in a case where no government agency is a party) considers terminating or impairing an individual's constitutionally cognizable life, liberty, or property interest, notice must be given to the individual whose interest is at stake in the proceeding.

The form of the notice and the procedure for delivery of the notice must be reasonably designed to insure that

the interested parties in fact will learn of the proposed adjudicative action. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)

The California statutory notice as interpreted by the California courts is inadequate because full compliance with its provisions are not being required and, therefore, the statute is not reasonably calculated to reach those who could easily be informed by other means at hand. When notice is a person s due, process which is a mere gesture is not due process. Mullane v. Central Hanover Bank & Trust Co., *supra*.

There are several conflicting decisions within the California courts regarding the interpretation of the service of process statutes. In Bishop v. Silua 234 Cal. App. 3d 1317 (1991), the appellate court held that when revising the service of process statutes in 1982, the legislature intended that the statutes regarding service should be strictly construed. Of equal significance, the court in Bishop held that the fact that the defendant knew of the lawsuit was not excuse for improper service. Similarly, in Zirbes v. Stratton 187 Cal. App. 3d 1407 (1986), the court found that a plaintiff must strictly comply with the statutory procedures that govern service of process.

Directly contrary to the holdings in Bishop, *supra*, and Zirbes, *supra*, other California courts have held that substantial compliance with the service requirements of the California Code of Civil Procedure is all that is required so as to confer personal jurisdiction. In reaching the holding that substantial compliance is sufficient, these California

courts have placed great weight on the fact that a defendant has received actual notice of the actual even though service was defective. *See*, Brein v. Bretchtel-Jochim Group, Inc. 6 Cal. App. 4th 1387 (1992); Khourie, Crew & Jeger v. Sabek, Inc. 220 Cal. App. 3d 1009 (1990).

In deciding whether to grant review, this Court looks to determine whether there are conflicting decisions which should be resolved in order to provide guidance to the state courts. The instant case presents an ideal vehicle for resolving the conflicting decisions with regard to an important issue of due process. As set forth below, the evidence is in conflict as to whether Petitioners were ever even served or properly served with the summons and complaint. The issue which requires resolution in this proceeding is whether full compliance or substantial compliance is necessary for service of process and as a matter of due process. Due process requires the government to give proper notice to individuals of government actions which would deprive those individuals of a constitutionally protected life, liberty, or property interest. The notice that must be given to the individual whose interest is at stake in the proceeding requires that the legislative requirements for service of process should be strictly construed. Nevertheless, conflicting decisions exist whether substantial compliance is sufficient as a matter of due process so as to confer jurisdiction over an individual.

The Petition also presents issues which regularly recur. There is a critical need for guidance to the trial courts regarding the requirements of service of process in proceedings and whether strict compliance or substantial compliance is the standard to be applied by the trial courts to meet the service of process requirements for due process under the Constitution and for jurisdiction over a defendant.

The decision of the California Supreme Court is

contrary to what should be firmly declared as the governing law that service of process must be properly performed and the requirements for service of process strictly complied with in order to obtain jurisdiction over a party as a matter of due process under the Constitution of the United States. This Court should grant review so that these important questions of law are resolved and announced to the California courts. Strict compliance with the statutes governing service of process should be controlling law of the State of California as a matter of due process under the U.S. Constitution and the conflicting decisions resolved as to this issue.

LEGAL ARGUMENT

The efforts of Respondents for service of the summons and complaint fell far short of the legal requirements for service of process and, accordingly, Petitioners moved to quash this defective service of process in the San Francisco Superior Court.

First, there has been no personal service upon Petitioners. Second, there has been no valid substituted service on Petitioners. Thirdly, there has been no other kind of proper service of the complaint as authorized by California law for service of process. As established by the declarations of Christine Hanlon and Michael Goldsun that were filed with the San Francisco Superior Court, none of the individuals named as defendants in the complaint (Petitioners herein), have been properly served with the Complaint. The motion to quash should have been granted by the San Francisco Superior Court.

A challenge to personal jurisdiction constitutes a special appearance and may be based on improper service of process. The improper service of process may be a defect in the method of service. Stamps v. Superior Court

14 Cal. App. 3d 108 (1971). A motion to quash may also be made by failure to serve the complaint and summons altogether. Wilson v. Eddy 2 Cal. App. 3d 613 (1969).

In the underlying proceeding, there was a failure to serve the complaint altogether or the complaint was not properly served on any of the Petitioners. As set forth in the declarations submitted to the San Francisco Superior Court of Christine Hanlon and Michael Goldsun in support of the motion to quash, Respondents failed to effect proper service of the summons and complaint on each of the Petitioners.

With regard to service or mailing of the summons and complaint upon Christine Hanlon, her declaration in support of the motion to quash establishes that she never even received a copy of the Summons and Complaint by any manner for service of process of a summons, i.e. personal service, substituted service, etc. Indeed, there has never been an attempt to provide notice of the underlying proceeding to Christine Hanlon even by regular mail at her place of residence. There has been a total failure on behalf of Respondents to attempt to effect service of process upon Christine Hanlon in any of the required manners for service of process or even providing notice by regular mail of the complaint at her place of residence. As the declaration of Christine Hanlon sets forth, she was never personally served, served by substituted service or served in any of the other manners for service of process. The declaration of Christine Hanlon also states that she has never even received a copy of the complaint at her place of residence by regular mail:

> 3. I was never personally served with a copy of any summons, complaint or supporting documents pertaining to the above-entitled proceeding. No person ever delivered or handed to me personally a

copy of the summons, complaint or any other legal papers regarding the above-entitled action. No person ever stated to me that I was being served with legal process or a copy of a summons and complaint in the above-entitled case. No person ever stated to me that I was being served on behalf of any other person, including Michael Goldsun, with a copy of the summons and complaint or legal process in this proceeding. No person ever stated to me that I was being served with legal process or a copy of the summons and complaint in this proceeding.

4. I was not served with the summons and complaint or other legal papers by substituted service on behalf of myself individually. No person over the age of 18, or of any age, received a copy of the summons, complaint or other legal papers and then delivered a copy of said papers to me on behalf of myself individually. No copies of the summons, complaint or other legal papers have ever been personally delivered to me by anyone in care of me individually.

5. There was never mailed to me and I never received by mail a copy of the summons, complaint or other legal papers addressed to me.

(Emphasis added, Declaration of Christine Hanlon submitted in support of motion to quash, paragraphs 3,4 & 5.)

The motion to quash should have been granted as to Petitioner Christine Hanlon as she was never properly served in any manner, including even by substituted service, with the summons and complaint.

The declaration of the process server, Eric Montoya,

confirms that Christine Hanlon was never personally served with the summons and complaint. The declaration states that after approximately thirty minutes I returned to the door of the space occupied by Michael and Christine Hanlon. No answer, knocked again, waited, no answer. . . . . I waited about five minutes but no one came to the door. I left the papers at the door.

As established by the declaration of the process server, service of process was never performed in accordance with the requirements of the Code of Civil Procedure upon Christine Hanlon. The process server acknowledges that he never personally gave the summons and complaint to Christine Hanlon so that there would be personal service of the summons and complaint. The process server also concedes that he never gave a copy of the summons and complaint to any adult occupant of the premises and then thereafter mailed a copy of the summons and complaint to Christine Hanlon so that there was substituted service of the summons and complaint.

The fact that the process server left the papers at the door is not sufficient for personal service or substituted service. In Sternbeck v. Buck 148 Cal. App. 2d 829 (1957), the process server handed the papers to Sternbeck s wife while Sternbeck was standing less than 100 yards away. The court ruled that the papers were not served according to the requirements of the Code of Civil Procedure. Whether or not the defendant receives the summons and complaint through some other means than lawful service is irrelevant.

Here in this case, however, service is disputed. The declaration of Christine Hanlon specifically states that No person ever stated to me that I was being served with legal process or a copy of the summons and complaint in this proceeding. The declaration of Christine Hanlon directly contradicts the declaration of the process server by declaring

that Christine Hanlon was never told she was being served with the summons and complaint. The declaration of Christine Hanlon goes on to say that she only learned of this action by because a copy of the summons and complaint was left outside the door to our unit.

Leaving a copy of the summons and complaint outside Petitioner Christine Hanlon s door is not sufficient personal service or substituted service. In a significant reversal from the usual California motion procedure, the moving party on a motion to quash service does not have the burden of establishing lack of personal jurisdiction. Rather, it is the plaintiff in opposing the motion who has the burden of establishing the existence of jurisdiction by a preponderance of the evidence. Magnecomp Corp. v. Athene Co. 209 Cal. App. 3d 526 (1989). In this case, Respondents failed to meet their burden of proof of establishing that service was accomplished upon Christine Hanlon as the declaration of the process server is directly contradicted by the declaration of Christine Hanlon. Furthermore, it is admitted by the process server that the summons and complaint was only left outside the door for Christine Hanlon. Respondents having failed to carry their burden of proof, the motion to quash should have been granted by the San Francisco Superior Court as to Petitioner Christine Hanlon.

Similarly, there has been lack of service of process or improper service of the summons and complaint upon Petitioner Michael Goldsun. The declaration of Petitioner Michael Goldsun submitted to the lower court in support of the motion to quash establishes that he was not personally served or served by substituted service. The declaration of Michael Goldsun states in pertinent part as follows:

> 3. I was never personally served with a copy of any summons, complaint or supporting documents pertaining to the above-entitled proceeding. No

person ever delivered or handed to me personally a copy of the summons, complaint or any other legal papers regarding the above-entitled action. No person ever stated to me that I was being served with legal process or a copy of a summons and complaint in the above-entitled case. No person ever stated to me that I was being served on behalf of any other person, including Christine Hanlon, with a copy of the summons and complaint or legal process in this proceeding. No person ever stated to me that I was being served with legal process or a copy of the summons and complaint in this proceeding.

4. I was not served with the summons and complaint or other legal papers by substituted service on behalf of myself individually or on behalf of any other person. No person over the age of 18, or of any age, received a copy of the summons, complaint or other legal papers and then delivered a copy of said papers to me on behalf of myself individually. No copies of the summons, complaint or other legal papers have ever been personally delivered to me by anyone in care of me individually or in care of Christine Hanlon.

5. There was never mailed to me and I never received by mail a copy of the summons, complaint or other legal papers addressed to me or addressed to any other person, including Christine Hanlon. I never received a copy of the summons and complaint of this proceeding by mail.

(Emphasis added, Declaration of Michael Goldsun submitted in support of motion to quash, paragraphs 3,4 & 5.)

Based on the declaration of Michael Goldsun, the

motion to quash should have been granted. There is no credible evidence submitted by the Respondents that would establish that Petitioner Michael Goldsun was served with the summons and complaint. In fact, the declaration of the process server actually confirms that the process server did not personally serve or serve by substituted service the summons and complaint.

The declaration of the process server states in critical part that I knocked on the same door and a man answered the and *when I asked him if he was Michael Hanlon he said Yes*. (Exhibit J, para. 3.) The declaration of the process server, Eric Montoya, confirms that Michael Goldsun was not personally served with the summons and complaint. Michael Goldsun would not identify himself as *Michael Hanlon* as there is no such person named as a defendant in this action. The fact that the process server would state under oath that Michael Goldsun answered in the affirmative and identified himself as *Michael Hanlon* reflects that the process server cannot be believed and has no credibility. Also, the fact that the process server would state under oath that Michael Goldsun identified himself as Michael Hanlon establishes that Respondents failed to carry their burden of proof that service was properly made upon Petitioner *Michael Goldsun*.

In addition to the fact that the process server actually served the wrong person, Michael Hanlon instead of defendant Michael Goldsun, is the other important fact that the process server did not hand the summons and complaint to Michael Goldsun. Instead, the process server states that he left the summons and complaint in his proximity, on a counter. The fact that the process server did not attempt to deliver the summons and complaint directly to Michael Goldsun, but merely left the summons and complaint in his proximity establishes that Michael Goldsun was not per-

sonally served with process. *See*, Sternbeck v. Buck 148 Cal. App. 2d 829 (1957).

No personal service, substituted service or service of any kind of the complaint was ever properly made upon Petitioner Michael Goldsun. Service of the complaint was required to be made in accordance with the rules of procedure regarding service of a summons and complaint as set forth in Chapter 4 of the Code of Civil Procedure entitled SERVICE OF SUMMONS. Respondents, however, failed to effect service pursuant to any of the authorized statutory means for service of process.

The declarations of the Petitioners establish by competent and credible evidence that they were not served personally or by substituted service with the summons and complaint. The declaration of the process server who was to have effected service of process upon the Petitioners establishes the exact opposite. Proper service was not completed upon either Petitioner Christine Hanlon or Petitioner Michael Goldsun. The Respondents have failed to carry their burden of proof. Respondents did not effect proper personal service or substituted service on any of the Petitioners. Respondents failed to effect proper service on any of the persons entitled to receive service of the summons and complaint. The lower courts should be reversed.

It is established case law that actual notice of the proceeding does not cure the defects of failure to serve or improper service. The statutory requirement for service of a petition must be fully complied with in order to obtain personal jurisdiction over the Petitioners. Jurisdiction does not result from mere knowledge of the proceeding but from proper service of process. Independent Bankers Trust Co. v. Superior Court 138 Cal. App. 3d 238 (1982); Sullivan v. Sullivan 256 Cal. App. 2d 301, 304 (1967); Pousson v. Superior Court 165 Cal. App. 2d 750, 752 (1958).

Also, when revising the applicable statutes in 1982, it should be noted the legislature intended that the statutes regarding service should be strictly construed. Bishop v. Silua 234 Cal.App. 3d 1317 (1991).

In Bishop the court stated that in revising these statutes governing service, the Law Revision Commission stated that excuses for noncompliance must be strictly construed. Equally significant, the court held that the fact that the defendant knew of the lawsuit was no excuse for improper service. Similarly, in Zirbes, *supra*, the court held that a Plaintiff must strictly comply with the statutory procedures for service of process.

Since mere knowledge of a proceeding does not confer jurisdiction, this Court should reverse the lower courts and order that the motion to quash be granted on behalf of each of the Petitioners. The right to lawful service as prerequisite for any action or proceeding has been upheld by numerous court decisions. Respondents should be required to meet the minimum requirement of the Code of Civil Procedure in order to pursue their action against the Petitioners. *See* Evartt v. Superior Court 89 Cal. App. 3d 795 (1979). The failure of Respondents to abide by the Code of Civil Procedure is evident from the declarations submitted in the trial court in support of the motion to quash. Since there has been improper service, the trial court lacks jurisdiction over the Petitioners.

Since there was a failure to effect proper service, the lower courts abused their discretion in failing to grant Petitioners motion to quash. Accordingly, the lower courts decisions denying Petitioners motion to quash must be reversed.

In Mullane v. Central Hanover Bank & Trust, Co., 339 U.S. 306, 314 (1950), this Court said concerning pro-

tection provided by the Due Process Clause of the Fourteenth Amendment: "The statutory notice to known beneficiaries is inadequate not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hands."

This portion of the Mullane decision is directly opposite to the decision in the present case. The decision of the California Supreme Court violates due process rights protected by the Fourteenth Amendment.

This Court has previously held that the state must give notice by personal service to both the owner and possessor of real property before allowing a forfeiture of one s rights, such as conducting a sale of the property for non-payment of taxes, or a condemnation proceeding when the name of the owner is known, or easily ascertainable. Mennonite Board of Missions v. Adams 103 S. Ct. 97 (1983); Schroeder v. New York 371 U.S. 208 (1962); Walker v. Hutchinson 352 U.S. 112 (1956).

The framers of the Constitution intended that its principles would apply equally throughout the nation. James Madison in presenting to the first Congress a Bill of Rights, which included the Due Process Clause of the Fifth Amendment, assigned as one of the principal purposes of his amendments obtaining an equality of those rights for persons in all of the states. 1 Annals of Cong. 439 (Joseph Gales ed., 1789). The proponents of the Fourteenth Amendment recognized that its Due Process Clause was taken from the Fifth Amendment and presented as one of its purposes that "all shall be protected alike in life, liberty and property." Remarks of Senator Jacob Howard, Cong. Globe, 39th Cong., 1st Sess. 1089 (1866).

Under the present conflict among the decisions of

this Court and the Supreme Court of California, constitutional rights are not being protected alike for all persons in the several states. Rather those rights depend upon the location of residence and the state setting the controlling precedent for the state in which the person resides. Unequal application of the constitution can only engender disrespect for the rule of law and the judicial process.

A primary function of the Supreme Court, as envisioned by the founders of the republic, was as a superintending power to secure uniformity in the exposition of the Constitution, laws and treaties of the United States. Remarks of James Madison as reprinted in 3 Jonathan Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution 532 (1836), (hereafter, Elliot, Debates) and remarks of Edmund Pendleton, president of the Convention of the Commonwealth of Virginia, on the adoption of the federal constitution, reprinted at 3 Elliot, Debates 518—19. James Iredell, speaking at the North Carolina convention, observed:

> The propriety of having a Supreme Court in every government must be obvious to every man of reflection. There can be no other way of securing the administration of justice uniformly in the in the several states. There might be, otherwise, as many different adjudications on the same subject as there are states. 4, Elliot, Debates 147.

The California statutory notice is inadequate because unless personal service is actually accomplished in full compliance with the statute, the notice is not reasonably calculated to reach those who could easily be informed by other means at hand. When notice is a person's due, process which is a mere gesture is not due process. Mullane v. Central Hanover Bank & Trust Co., supra.

The Respondents should be required to meet the minimum requirements of procedural due process in order to pursue their action against Petitioners. Mullane v. Central Hanover Bank & Trust Co., supra.

CONCLUSION

For all of the reasons set forth herein, review and relief should now be granted in order to address the important questions presented. In order to obtain uniformity in the construction of the constitution and to obtain equality for persons in the several states in the rights and protections secured by the constitution, Petitioners pray that this Court issue its writ of certiorari and accept jurisdiction over this case.

October 24, 2002

Respectfully submitted,

DAVID P. WEAVER, JR.,
Attorney at Law
The Flood Building
870 Market Street, Suite 349
San Francisco, CA 94102
Telephone: (415) 433-7009

APPENDICES

Garry Cohen, Esq. (State Bar No. 177859)
Law Offices Of Garry Cohen
37 Junipero Serra Boulevard
San Francisco, CA 94127
Telephone: (415) 564-9990

Attorneys for Plaintiff

FILED
JULY 12, 2002

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO
COUNTY

Stanley Chia and Shomen Kung,	))	Case No. CUD-02-602950
Plaintiffs,	)	[~~PROPOSED~~] ORDER
vs.	)	DENYING DEFEN
Christine Hanlon,	)	DANTS
Michael Goldsun & DOES 1-10,	)	MOTION TO QUASH
Defendants	))	

Defendants Motion to Quash came on regularly for hearing on July 12, 2002 at 9:30 a.m. in Room 301 at the above-entitled Court. Plaintiffs were represented by the Law Offices of Garry Cohen. Defendants were represented by John Hanlin.

After full consideration of all papers filed in support of and in opposition to the motion and oral argument, the Court rules as follows:

IT IS SO ORDERED

Defendants Motion to Quash Service of Summons and Complaint is DENIED.

DATED: 07/12/02

/S./ JAMES J. McBRIDE
A. James Robertson, II
Judge of the Superior Court

APPENDIX A

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 1

CHRISTINE HANLON, ET AL.,
Petitioners,
v.
SUPERIOR COURT OF SAN FRANCISCO COUNTY,
Respondent;
SHOMEN KUNG CHIA, ET AL.,
Real Parties in Interest.

A099507
San Francisco County No. 02602950

FILED
AUG 07, 2002

BY THE COURT:

The petition for writ of mandate or prohibition is denied. Real parties request for sanctions is also denied.

The justices participating in this matter were:

_Marchiano, P.J. _Stein, J. _Swager, Jr. _Margulies, J.

Date: AUG 07 2002 /S./ MARCHIANO, J. P.J.

APPENDIX B

Court of Appeal, First Appellate District,
Division One - No. A099507
S109250

IN THE SUPREME COURT OF CALIFORNIA

En Banc

CHRISTINE HANLON et al., *Petitioners*,

v.

THE SUPERIOR COURT OF
SAN FRANCISCO COUNTY, *Respondent*;

SHOMEN KUNG CHIA, et al., Real Parties in Interests.

Petition for review DENIED.

FILED
OCT 16 2002

/S./ GEORGE
Chief Justice

APPENDIX C